

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 23-197 PA (JPRx)	Date	February 15, 2023
Title	Josephine Marie Smith v. Barack Hussein Obama II		

Present: The Honorable			PERCY ANDERSON, UNITED STATES DISTRICT JUDGE		
Kamilla Sali-Suleyman		Not Reported		N/A	
Deputy Clerk		Court Reporter		Tape No.	
Attorneys Present for Plaintiff:			Attorneys Present for Defendant:		
None			None		

Proceedings: IN CHAMBERS - COURT ORDER

On January 17, 2023, the Court dismissed Plaintiff's Complaint for lack of subject matter jurisdiction. (Docket No. 7.) The Court granted Plaintiff leave to amend to attempt to establish federal subject matter jurisdiction, and set the deadline to file an Amended Complaint, if any, for February 7, 2023. The Court explicitly warned Plaintiff, "[f]ailure to file a First Amended Complaint on or before February 7, 2023; to adequately allege the Court's jurisdiction; or to allege sufficient facts to support the alleged claims may result in the dismissal of this action without prejudice." (*Id.*) As of today's date, which is well past the Court's February 7th deadline, Plaintiff has not filed an amended complaint or filed any response to the Court's order.

The Court may dismiss with prejudice an action or claim sua sponte if "the plaintiff fails to prosecute or to comply with the [Federal Rules of Civil Procedure] or a court order." *See* Fed. R. Civ. P. 41(b); *Link v. Wabash R.R. Co.*, 370 U.S. 626, 629-30 (1962) (dismissal for failure to prosecute); *Yourish v. Cal. Amplifier*, 191 F.3d 983, 987-88 (9th Cir. 1999) (dismissal for failure to comply with court order). This inherent power supports the orderly and expeditious disposition of cases. *See Link*, 370 U.S. at 629-30; *Yourish*, 191 F.3d at 987-88; *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992).

In *Henderson v. Duncan*, the Ninth Circuit set forth five factors for a district court to consider before resorting to the penalty of dismissal: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits and (5) the availability of less drastic sanctions." 779 F.2d 1421, 1423 (9th Cir. 1986). Dismissal is appropriate "where at least four factors support dismissal, or where at least three factors 'strongly' support dismissal." *Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998) (internal citations omitted) (citing *Ferdik*, 963 F.2d at 1263). Cases involving sua sponte dismissal warrant special focus on the fifth Henderson factor. *Id.*

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Here, an evaluation of the Henderson factors ultimately weighs in favor of the Court's decision to dismiss this action. In assessing the first Henderson factor, the public's interest in expeditious resolution of litigation will be satisfied by a dismissal. See Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002) (citing Yourish, 191 F.3d at 990 (“[t]he public's interest in expeditious resolution of litigation always favors dismissal.”)). Relatedly, with respect to the second factor, the Court's need to manage its docket will be served by dismissal. See id. (“The trial judge is in the best position to determine whether the delay in a particular case interferes with docket management and the public interest.”). The third Henderson factor at least marginally favors dismissal because Defendant may be further prejudiced unless the complaint is dismissed. See Yourish, 191 F.3d at 991. Finally, in considering the fourth and fifth Henderson factors, the Court notes that Plaintiff was warned about the consequences of failing to file an Amended Complaint by the deadline stated in the Court's Order. Nevertheless, Plaintiff has taken no action whatsoever. Because the Court has adopted the “less-drastic” sanction of dismissal without prejudice, the fifth Henderson factor favors dismissal. See McHenry v. Renne, 84 F.3d 1172, 1179 (9th Cir. 1996) (district court should first consider less drastic alternatives to dismissal with prejudice).

The Court finds that Plaintiff has failed to file an Amended Complaint pursuant to the Court's order, and has therefore abandoned this action. The Court dismisses this action without prejudice. See Fed. R. Civ. P. 41(b); see also Yourish, 191 F.3d at 986-88; Ferdik, 963 F.2d at 1260.

IT IS SO ORDERED.